

THE EFFECTS OF THE CIVIL RESPONSIBILITY OF THE HOSTING PROVIDER ON THE INTERNET IN THE JORDANIAN LAW- A COMPARATIVE STUDY

آثار المسؤولية المدنية لمورد الاستضافة على الإنترنت في القانون الأردني – دراسة مقارنة

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Abstract:

This research, which is a comparative study, highlights the civil responsibility and the obligation of the hosting provider (fournisseur d'hébergement) on the Internet in the Jordanian law. The law register has newly organized a private law about it.

"The electronic translation law NO. (15) Of the (2015). In comparative translation to other Arab and foreign countries the newly electronic law is devoid of any references that determines the nature of the civil liabilities of the hosting provider. It has to be developed according to the revolution of the Internet.

Keywords: Internet; responsibility; law.

المخلص:

تبرز هذه الدراسة المقارنة المسؤولية المدنية والتزام لمورد الاستضافة (fournisseur d'hébergement) على الإنترنت في القانون الأردني، حيث تم مؤخراً تنظيم قانون خاص به، وهو "قانون الترجمة الإلكترونية" رقم 15 لسنة 2015، المتعلق بالترجمة المقارنة إلى الدول العربية والأجنبية الأخرى، ويخلو هذا القانون الإلكتروني الجديد من أي إشارات تحدد طبيعة الالتزامات المدنية لمورد الاستضافة، وهو ما يجب تطويره وفقاً للثورة الحاصلة في مجال الإنترنت.

الكلمات المفتاحية: الانترنت، المسؤولية، القانون.

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INTRODUCTION:

The electronic responsibility is a newly legal one that has widely become accepted at all levels Local, regional and international. Therefore, it is a necessity to establish legal bases that govern and protect the users of the websites.

Both the electronic civil law and the traditional one have and undergo the same responsibilities, obligations between parties. Especially, if there is a signed contract between the parties, that control the relation between them, especially in a case of breaking this contract.

Therefore, using Internet requires legal aspects that control the relations between all parties, who are providing, using and saving the information on the Internet.

The hosting provider has to save all the information of the users on a server that can be used in any illegal cases.

The first part of this research was published in the journal of the Law Studies at the University of Jordan in the fourth issue in (2018) that entitled "Maintaining the civil responsibilities of the hosting provider on the Internet " . This comparative study is a complementary one that focuses on "The effects of the civil responsibilities of the hosting provider on the Internet in the Jordanian law".

THE STUDY PROBLEM:

The study focuses on the implication of the civil law on the hosting provider on the internet, the responsibilities, and the obligations that may govern the relations between the parties that follow the E-civil law.

This problem can be re formulated by answering the following questions:

- What are the civil responsibilities between the parties of using the Internet?
- Is it permissible to agree on exemption from the legal liability of the hosting provider on the internet?
- What is the position of the Arab legislator according to their weakness in this issue?
- Is it possible to deny legal liability for the hosting provider on the internet?
- How appropriate are the effects of the traditional civil liability on the effects of the electronic civil liability?
- Does it include compensation for expected and unexpected damage to the contractual liability of the hosting provider on the internet?

OBJECTIVES OF THE STUDY:

- The researcher has to address this problem by answering the above questions.

- The researcher has to describe the consequences of the legal responsibilities that related to E- civil law.
- The researcher has to find out if the E- civil law is applied in a suitable way.
- The researcher has to collect the most important judicial and comparative opinions that related to the same subject that helps in the application of the new law.

THE IMPORTANCE OF THE STUDY:

- The subject has not been discussed in details in the Jordanian or the Algerian law before.
- The study will make use of all the applications of the new E- law in others countries especially the European one.
- The importance of the study to many cases in the Jordanian courts.
- It will enrich the legal library with the newest judicial applications of the new E- law.

THE METHODOLOGY OF THE STUDY:

The study will focus on the Jordanian law, and compare it to others such as the French, Bahraini, Algerian, Omani and the Egyptian laws in order to make use of their experiments to avoid any disadvantages in the application of the new E- civil Jordanian law.

DETERMINANTS OF STUDY

The limits of this study are limited to the implications of the civil liability of the hosting provider on the Jordanian Internet - a comparative study - and we will find some comparative judgments, whether legal, judicial or jurisprudential, to guide either to address the shortcomings of the current provisions, If they comply with the provisions of both legislations,

In a previous study, we discussed the question of rooting civil liability of the hosting provider on the Internet, given the space permitted for publication in scientific journals.

THE STUDY PLAN

- I - Legal definition of the hosting provider (fournisseur d'hébergement) on the internet.
- II - Claim for compensation .

III - The means of denying the civil liability of the hosting provider on the internet.

IV - The limits of the contractual exemption from the civil liability of the accommodation contractor in the Internet.

Conclusion: Results and recommendations.

References.

I - LEGAL DEFINITION OF THE HOSTING PROVIDER ON THE INTERNET

One of the first countries to have taken precedence in legislation dealing with the responsibility of the hosting provider (**fournisseur d'hébergement**) on the internet is Germany. This was done through the Teleeservices Act, which became effective on 1997. The law of the information and communication services was passed. In 1998, the United States enacted the US Copyright Act on Copyright. The Act was amended in 1976, followed by other countries, as we shall see, in the enactment of special legislation regulating the work of copyright. From the disappearance of this profession in specific frameworks.

The accommodation service, as defined in Article 14 of European Directive No. 2000-31 of 8 June 2000 on e-commerce: (an activity carried out by a natural or legal person to store websites and web pages) Web pages) on his computers, which are directly and permanently available for free or for free, and puts through it, at the disposal of its customers the technical means and information that enables them at any time to broadcast what they want on the Internet, texts, images, Organizing forums and discussion forums, and establishing links with other websites (liens hyper texts ...). The accommodation agent provides its customers with the allocation of a disk space or a traffic bar to transmit the information they wish to publish on the Internet, and to provide the customer with a special account containing a code to accuse him, Private can contact the hosting provider on the internet, add, delete, or change the information he wants).

Article 6-1 / 2 of the Law of Trust on the French Digital Economy No. (45) of 2004 (c) defines the accommodation contractor as: (a) Any natural or juridical person who, at no cost, And messages of any nature and provided by the beneficiary of such services).

As defined in article 43/8 of the French Freedom of Communication Act No. 719 of 2000 (French Hostage Contractor): a group of natural or juridical

persons who undertake free or in exchange for the direct and continuous storage of information in order to establish At the disposal of the public signs or writings or pictures or songs or letters and whatever the nature of the place reception).

The Algerian legislator defined in Law No. (9-4) of 2009, which contains the special rules for the prevention and control of ICT-related crimes in Article 2 (d) where: (Any other entity that processes or Storing information data for the said service or its users).

Some French jurists have defined *fournisseur d'hébergement* as: (a natural or legal person who stores and saves data and information to its clients, and provides Technical and informational means that allow them to obtain these data and information throughout the day via the Internet) ¹

For the Jordanian legislator - as in some Arab legislations - no direct legal provision was made to indicate who the Internet hosting provider on the internet is despite the practical importance and urgent need for Internet services, including the service provided by the accommodation contractor over the network, However, we find that the comparative legislation was more clear in the definition of Internet service providers, including the hosting provider on the internet. Article (2) of the Jordanian Electronic Transactions Act of 2015 defines: (The person who is creating the information message) (The electronic program used to execute an action or respond to an automatic procedure for the purpose of creating, sending or receiving an information message), the definition is limited to the exchange of electronic messages, Of course not enough to show the concept of accommodation contractor.

The accommodation contractor can be defined as: "Every natural or juridical person undertakes to offer web pages on his computers that are directly and permanently available for a fee or free of charge and through which he provides his clients with technical and informational means Which enables them at any time to broadcast what they want on the Internet from images, sounds, and other electronic services. "It serves as an intermediary between the user of the Internet and electronic content, provides technical service and does not interfere at any time in the development Or broadcast electronic content, and the role of

¹ - Cholet Sylvie, *La responsabilité du fournisseur d'hébergement*, *Paries*, février 2001 p. 2, sur Le site: [amdm. Free. Fr/Responsabilite_des_hebergeurs. Htm](#); feral-Schuhl Christiane *Cyber droit, le droit à l'épreuve de L'internet*, 3 éd., Dunod, paris , 2002. p. 130.

the sponsor of technical accommodation is very important as it can be challenged Obligations and the statement of the nature and limits of responsibility.

II - CLAIM FOR COMPENSATION:

If the elements of civil liability are realized, the injured party (the client or third party) is entitled to compensation by the torturer, and if the assignor is found responsible, the other party shall have the right to compensation for reparation for the damage caused by the breach. In-kind compensation, in that the first shall be before the breach of the obligation, there shall be a performance in kind of the obligation by not derogating from it, and the second shall be after the breach of the obligation, the removal of the violation shall be in kind compensation¹.

Where the execution of the obligations is the original in the implementation of the obligations, whether in-kind or in-kind execution, the accommodation contractor shall provide an obligation to the customer, unless otherwise agreed by the contractors. Article 355/1, Of the Jordanian Civil Code that: (obliges the debtor after his excuse to implement what he committed to implementation in kind where possible)², the basic rule in the implementation of in-kind compulsory is that the creditor may not demand his own right, but must resort to the public authorities to demand implementation, This shall protect the creditor, the debtor and others, and if this is not possible He came to the implementation in return.

In return, payment is the breach of the obligations of the debtor and thus constitutes a civil sanction for civil liability (contractual, default)³, which is intended, in addition to denying the debtor to repair the damage suffered by the debtor, The implementation may be in exchange for monetary compensation, any amount of money, or this execution may be by performing a specific order in favor of the client or third parties. (359) of the Jordanian Civil Code that: (if the

¹ - For more, see Senhoury, *The Mediator on the Interpretation of the New Civil Code*, C2, p. 762/ Ghanem, in *General Theory of Commitment*, p. 8

² - In a decision of the Jordanian Court of Cassation, it states: "The contract holder may hold the contract and ask to execute it in kind, if possible, otherwise by way of compensation or to request the annulment of the contract if it is found that it is no longer feasible to comply with the other party's breach of its obligations. The employer has the right to choose the implementation by way of compensation. "Decision No. 2002/3015, No. 9, July 2002, published in the *Lawyers' Journal*, p. 2240. See: *Discrimination of Rights No. 1997/2212 dated 25 January 1998*, Adalah Publications

³ - Al-Jabouri, Al-Mabsout in explaining the civil law, c. 2, book II, p

subject of the right is to refrain from The debtor may request to remove what has been infringed or to request the court to authorize such removal at the expense of the debtor.) The in-kind compensation is intended to restore the situation to what it was before the injury occurred. In-kind compensation is the method The best remedy for reparation, if this can not be ruled by monetary compensation.

Some have defined compensation as: restoring the balance that has been disturbed by the damage and returning the victim to his or her condition by assuming that he will not be harmed so that there is no loss without compensation or gain beyond the value of the damage¹. (Civil Code), in article (1142) of the French Civil Code, and in article 203/1 of the Egyptian Civil Code. Compensation in return is the other side of compensation, which may take the form of monetary compensation (1382 civilians) (Or 171 Egyptian civilians), or by performing a specific order as compensation, Weid non-cash, imposing a hosting provider remove the content of an illegal over the internet

The general rule is that compensation is not only due to the contractual liability of the creditor, which is explicitly required by the debtor (article 361) of the Jordanian Civil Code, article 179 of Algerian civilians and article 218 of the Egyptian Civil Code. (Article 362/2) Jordanian civil, article 181 Algerian civil and article 220 Egyptian civil.

The claim for liability for the contract is for the direct damage expected, and the unexpected damage is not included in the contractors' account, and therefore is not covered by the compensation. Article 182.2 requires an Algerian civilian and article 221/2 (Egyptian civilian) That a debtor who has committed no fraud or serious error is required only to compensate for damage that could normally have been incurred at the time of the contract. As for the tort liability, the compensation is for the direct damage that is expected and not expected, and this is what the Jordanian judiciary said². Article 182/1 provides for an Algerian civil and article 221/1 Egyptian civil, As follows:(1. If compensation is not determined in the contract or in a provision of the law, it is the judge who appreciates it. Compensation shall include the loss and loss of the creditor's right, provided that this is a natural consequence of non-fulfillment of the obligation or of late fulfillment The damage is a natural result if the creditor can not expect it to

¹ - Mohamed, *Extent of Compensation for Damage Change*, p65

² - In a decision of the Jordanian Court of Cassation: "Compensation for tort liability is for any direct or unexpected damage." *Discrimination of Rights No. 1984/682, Journal of the Bar Association, 1985, No. 5, p. 1511.*

make a reasonable effort, and it is the law that determines the damage covered by the compensation, Ad comprehensive direct damage to the whole, whether expected or unexpected).

(Article 412) is a Jordanian civil, article 217 is an Algerian civil, and 279 is an Egyptian civilian. If the officials are in charge of the contractual liability, (265) Jordanian civilians, Article (126) Algerian civilians, and Article (169) Egyptian civilians. If the number of officials is equal to the number of civil servants, Tort liability, they are all in solidarity in their obligation to make up for the damage, and the responsibility is between them Unless the judge appoints their respective share in the compensation. The solidarity of those responsible for the act is harmful by law. Article 217 states: "Solidarity between creditors or between debtors is not presumed, but is based on agreement or provision of the law." In this regard, the law requires the solidarity of those responsible for tort liability, while no solidarity Between the debtors in the liability contractual unless there is a clause in the contract to do so, and this provision came in accordance with the text of article (279) Egyptian civil.

III - THE MEANS OF DENYING THE CIVIL LIABILITY OF THE HOSTING PROVIDER ON THE INTERNET

Article 261 of the Jordanian Civil Code that: "If the person proves that the damage is Has arisen from a foreign cause in which he has no hand as a heavenly pest, a sudden accident or a force majeure Or the act of others or the act of the victim was not bound by the guarantee unless otherwise provided by law or agreement " Therefore, there are a number of means that deny civil responsibility, and this is what we will show below:

1. FORCE MAJEURE OR SUDDEN ACCIDENT:

makes some of the commentators synonymous with one meaning, which means a non-incident In which the person can not be paid and can not be paid, and the implementation of the obligation becomes impossible, so it is required For such a situation to be an accident is not predictable and impossible to pay, as the person should not be Hand in it and make the implementation of the commitment impossible for all people not just Tired or difficult.

As for the position of the Jordanian judiciary against force majeure and sudden incident, in a decision of the Jordanian Court of Cassation, which stated that: "Force majeure or sudden accident is the hand of man in the occurrence and

can not be expected neither time nor place and at the same time can not be paid as war-related incidents Or the enactment of new legislation or natural disasters such as earthquakes, storms, floods, fires, epidemics or the like¹.

Some jurists have tried to define the foreign cause by saying:" Any act or incident not attributed to him And it shall prevent the occurrence of harmful work impossible². "And he knew it Others said:

"Every order is not the cause of the plaintiff, and it is the cause of the damage that caused the damage³.

Some have defined it as "an event that can not be attributed to any of the people And that is the force majeure or sudden event, or it is actually issued by the creditor itself or the act of someone from third parties⁴

In French civil law, they know the foreign cause:" Every order not attributed to the debtor led To the detriment of the creditor⁵. "Some of them have defined the concept of force majeure as:" an incident arising independently of the debtor's will and He can not foresee or prevent them and it is impossible for him to fulfill his obligation⁶.

The foreign reason is also found in the provisions of the French Civil Code. Article 1147 states: "The debtor shall be liable for compensation if there is a place for that either because the obligation is not fulfilled or because of the delay in execution, That the non-implementation was due to a foreign reason not from his work provided that there is no bad faith on his part)⁷

¹ - *Discrimination of Rights No. 1997/1969 dated 1997/7/5, Adalah Publications / Discrimination of Rights No: 3600/2006 Date 2006/2/12: Adalah Publications.*

² - See: Jubouri, Al-Mabsout in the *Explanation of the Jordanian Civil Code*, C1, p. 376 / Mark, Solomon, *Civil Liability*, p. 483.

³ - See: *Resurrection, Sources of Obligation*, p. 460

⁴ - Ghanem, *op. Cit.*, Al-Hashim, p. 51.

⁵ - Aubry et rau, *cours de droit civil francais*T.4 P.P166

⁶ - R.dufourmantelle . *la force majeure dans les contrats civils ou commerciaux et dans les marchés administratifs..p12 .Henri LALOU. La responsabilité civile. Principes élémentaires et applications pratiques. 2 édi. Dalloz. P 164.*

⁷ - Article 1147 of the French Civil Code states: « Le débiteur est condamné, s'il y a lieu, au paiement de dommages et intérêts, soit à raison de l'inexécution de l'obligation, soit à raison du retard dans l'exécution, toutes les fois qu'il ne justifie pas que l'inexécution provient d'une cause étrangère qui ne peut lui être imputée, encore qu'il n'y ait aucune mauvaise foi de sa part. »

The foreign reason is also provided in the provisions of the Civil Code Article 261 of the Jordanian Civil Code stipulates that¹: That the damage was caused by a foreign cause in which he has no hand as a heavenly pest, a sudden accident, a force majeure, the act of others, or the act of the injured person Unless otherwise required by law or agreement).

However, it remains to be seen that the question of the assessment of the foreign cause or force majeure is a matter of fact, not a matter of law, which is appreciated by the court of the subject. This is what the Jordanian Court of Cassation pointed out in one of its principles: The obligation is impossible to lead to the expiration of the contract, and that the force majeure in the circumstances of the implementation of the contract is a matter of fact estimated by the court subject².

2. THE WRONG OF THE VICTIM AS A PICTURE OF THE FOREIGN REASON:

The defendant can deny the causal relationship between the fault (the malicious act) and the damage caused by proving this relationship between the wrong (act) of the injured person himself and the damage inflicted by any injured - and will bring together jurisprudence and the Egyptian judiciary - the requirement that The injured person shall be entitled to the degree of error, and shall be satisfied that the mere act of the injured person - not a mistake - shall not be sufficient to erase or mitigate the liability of the defendant, otherwise the injured person shall not be able to return In full compensation for the damage suffered³, so that the responsibility of the accommodation contractor or third parties can be denied Error injured main reason causing damage.

Article 264 of the Jordanian Civil Code stipulates that: (The court may reduce the amount of the guarantee or do not control whether the victim has participated in causing the damage or increased it).

3. THE MISTAKE OF OTHERS AS A PICTURE OF THE PICTURES OF THE FOREIGN REASON:

Any person other than the injured plaintiff, the defendant, the accommodation contractor or third parties shall be deemed to be third parties ,

¹ - As stipulated in Article 448 of the same law: "The obligation shall terminate if the debtor proves that the fulfillment of the obligation becomes impossible to him for a foreign reason for which he has no right."

² - Discrimination Rights: No. 82/233 Page 1150 years 1982, C5, Journal of the Bar Association.

³ - Sanhuri, op. Cit., P. 881, echo, op. Cit., P. 610

The Undertaker shall be deemed to be responsible for third parties responsible, third party responsible for third party accommodation contractor, So that the fault of third parties is a reason for denying the liability in whole or in part Article (19/5) of the Bahrain Electronic Transactions Law stipulates that: For the network intermediary, any person to whom the network intermediary has no actual control).

According to the latest development of French jurisprudence and jurisprudence, and above all in Jordanian law, it is required in the act of others to be characterized by error or illegality, this act, whether lawful or illegal¹, justified or unjustified would sever the causal relationship between the act (265) of the Jordanian Civil Code stipulates that: (If multiple officials are responsible for a harmful act, each of them is responsible for the proportion of his share therein and the court shall judge equally Or solidarity and solidarity among themselves).

IV - THE LIMITS OF THE CONTRACTUAL EXEMPTION FROM THE CIVIL LIABILITY OF THE ACCOMMODATION CONTRACTOR IN THE INTERNET

As a general rule, it is permissible to agree on exemption from contractual liability, because the source of the contract or contractual obligation, and therefore may be exempt from or modify its provisions under this same contract, except those arising from fraud or serious error (Article 261)), The provisions of these articles may "... agree to exempt the debtor from any liability arising from the performance of its contractual obligation ...", while in any case, any agreement on exemption from tort liability is void. The parties to the contract may agree to waive the liability for the contract unless it arises in fraud or serious error, or the agreement to reduce or tighten the liability of the contract, such as determining a certain amount of compensation whatever the damage, or providing technical assistance to customers, Or other conditions that do not affect the essence or purpose of the contract.

There is no doubt about the validity of this condition, but it is not valid, according to the general rules and in accordance with the principle of proportionality of the effects of the contract, only in the face of the contractor,

¹ - See: Khalayleh, *op. Cit.*, P. 171 et seq.

and does not apply in the face of others who are harmed by the violation committed¹.

The general trend in France is that this depends on the cause of the breach, so it is possible to conceive of the validity of the conditions for excluding or limiting the liability of the hosting provider in the electronic services contract if it fails or fails to implement its obligation without intent or error Significant. This means that the subscriber has the burden of proving the fraud of the hosting provider until he waives the exemption clause. Thus, the invalidity of this type of contract only leads to arbitrary conditions².

(Article 256 Civilians, Article 124 Algerian Civilians), which determines their provisions, and therefore may not be agreed to amend or exempt them, as this is a public order which can not be violated Albeit by agreement. Article 270 of the Jordanian Civil Code stipulates that: "Every condition that relieves liability from the harmful act is null and void." Article (178/3) corresponds to an Algerian civilian, Article 217 is an Egyptian civilian, and article (259/3) is an Iraqi civilian.

The general thrust of the provisions of Article 6 of the French Law on "Trust in the Digital Economy" and Articles 12-14 of the European Directive on "Electronic Commerce" tend to exempt the ISP from liability, unless proven However, no action has been taken to remove him or prevent him from reaching the public, or in any other case, if he is requested to remove this content or to prevent public access to it by the judicial authority, and he does not comply with this request.

CONCLUSION:

In this conclusion, we should focus on the main points we have reached and the proposals we see, as follows:

1. RESULTS:

Based on what was presented in the study, and what the study of the study and its demands addressed, the following results can be formulated:

- Although the Jordanian legislator has passed special legislation in relation to electronic transactions, which is the Transaction Law of 2015, it is regrettable to know the reason why the comparative legislation on determining

¹ - Farah, *op. Cit.*, P. 358.

² - *Guide Permanent Droit et Internet*, E 1.2., *Fourniture d'accès, précité*, n° 36, p. 15.

the legal liability of Internet hosting providers, including the housing contractors, The need to fill the shortfall in the special legislation dealing with this subject has become urgent, taking into account the nature of the accommodation contractor's contract.

- If the accommodation contractor responds to the order of the competent authorities or to the injured person's request and withdraws the infringing content, or denies access to it, his civil liability is lost. If he refuses to do so, his liability shall be raised on the basis of his fault of the violation or of his negative attitude. In the event that the contractor fails to prove that the damage was caused by a foreign cause for which he has no right.

- It may be agreed to waive or modify the provisions of the contractual liability, except as a result of fraud or serious error, while in all cases nullification of any agreement on exemption from tort

2. RECOMMENDATIONS:

- Based on what was presented in the study, and on the most important findings of the study, the following recommendations can be formulated:

- We call on the Jordanian legislator to make use of the experience of comparative legislation on this subject, by revising the law of electronic transactions, by organizing special provisions specifying the legal system for accommodation operators consistent with the nature of their work, , And the limits and provisions of their legal responsibility.

- The establishment of special rooms within the corridors of the judiciary specialized in the consideration of electronic cases, similar to the specialized chambers to look at civil cases in isolation from criminal cases, and to strengthen judges with the necessary knowledge, and the need to acquaint them with the experience of the comparative judiciary in this subject, The cases are subject to special judicial rulings that are consistent with their nature.

- The need for concerted international and regional efforts and urging States to recognize the importance of joint cooperation among themselves through the drafting of common rules and provisions that reflect the legal procedures followed in this field, which ensure respect for the laws and regulations in force, On its internal environment.

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